

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-1477

FORMICA CORPORATION,

Petitioner,

v.

SAUL F. LEFKOWITZ, DAVID J. KERA and JANET E. RICE,
Members, Patent and Trademark Office Trademark Trial
and Appeal Board, AND FEDERAL TRADE COMMISSION,

Respondents.

**REPLY MEMORANDUM IN SUPPORT OF PETITION FOR
A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF CUSTOMS AND PATENT APPEALS**

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May 18, 1979

CITATIONS

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Respondents assert that the standards employed by the Court of Customs and Patent Appeals in denying the writ of mandamus do not conflict with the prevailing standards of any circuit court of appeals. Choosing to ignore Judge Friendly's assertion that there is conflict and confusion among the circuits which requires the attention of this Court, *Kaufman v. Edelstein*, 539 F.2d 811, 817 (2d Cir. 1976), Respondents argue that the differently articulated standards governing the availability of mandamus in the various circuits are simply a reflection of the fact that the granting of a writ is an exercise of discretion by the individual courts. (Respondents' Mem. 3). On the contrary, the CCPA expressly refrains from exercising *any* discretion to consider granting mandamus where, as here, a novel question of law is presented and arguable support exists for the lower court's decision. In these circumstances, the petition for mandamus *must* be denied. Accordingly, the

conflict between the circuits is real. It is not the result of the exercise of discretion but the product of at least three separate and totally distinct governing standards. Petitioner respectfully submits that the striking difference in the availability of prerogative writs among the circuits should not be permitted to continue by this Court.

In addition to accentuating the split between various federal courts concerning the availability of mandamus, the CCPA's decision totally ignores the prior holdings of this Court. *See, e.g., Schlagenhauf v. Holder*, 379 U.S. 104 (1964); *La Buy v. Howes Leather Co.*, 352 U.S. 249 (1957). Both decisions expressly authorize the utilization of mandamus to determine undecided legal questions and to settle new and important legal problems. *Schlagenhauf v. Holder*, 379 U.S. at 110-11. By this decision the CCPA has specifically precluded itself from exercising any jurisdiction in these important situations and has abrogated its duty to lead, supervise and otherwise aid the lower tribunals of the Patent and Trademark Office.

CONCLUSION

Wherefore, petitioner Formica Corporation respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Customs and Patent Appeals entered in this proceeding on January 25, 1979.

May 18, 1979

Respectfully submitted,

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